The right of the Legislature to change the ordinary rule of procedure, so that a verdict may be rendered by less than the whole of the jury, has been embodied in the constitutions of at least three States (California, Texas, Nevada), and the new practice has been found to work well. In criminal cases where guilt must be proved beyond a reasonable doubt there is a distinct reason for requiring unanimity which does not exist in civil cases, where proof needs only to be by preponderance of evidence. In this country and in England, therefore, there has been scarcely a suggestion of any change in the criminal jury. In Scotland and France, however, it is interesting to note that in criminal cases a majority verdict convicts, France having no civil jury, and Scotland discharging its civil jury after six hours' deliberation, if in that time it does not reach a unanimous verdict.

"If it could be assumed," says Judge Pitman, in a magazine article,[1] speaking of the rule of unanimity, "that the dissentient jurors were fairer or wiser than the majority, we could tolerate it well; but unfortunately the alliance between ignorance and obstinacy well known of old continues. . . . In civil cases where a preponderance of evidence alone is required, it would seem that sooner or later the practical American mind would conclude that when this preponderance was made out to the satisfaction of at least three-fourths of the jury and of the court it was time to make an end of litigation, especially when we consider that this state of things would almost certainly foreshadow the ultimate result, the present acceptance of which would merely avoid one of those calamitous delays of the law which have tired out sturdier natures than that of Hamlet."

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Liability of Elevated Railway Companies to Abutters. — The case of *Pappenheim* v. *The Metropolitan Elevated Railway Company* has recently been decided in the New York Court of Appeals. In this case plaintiff purchased property on the line of the road after the road was fully established. He then brought this action for damage done to his property by the operation of the road. The defendant contended that as soon as the railroad went into operation, the damage to the property of abutters was completed once for all. That, as the plaintiff bought subsequently to this time, he received, in the lower price which he paid for the property, a due allowance for the damage inflicted by the defendant, and therefore his recovery, if any, should be for nominal damages only. Peckham, J., in deciding for the plaintiffs, took the ground that the defendant's act in maintaining their railroad in the highway was a continuing trespass on the abutter's property. The grantor of the plaintiff undoubtedly had a right of action against the defendant, but that fact made the defendant's act no less a wrong to the plaintiff. Nor was the fact material that the plaintiff acquired the property at a lower price because of the trespass. The defendant's act was still a wrong against the plaintiff, for which the latter was entitled either to an injunction restraining the defendant from operating its road or to substantial damages. The defendant's line of argument would result in preventing grantees from stopping trespasses which had begun while the property was in their grantor's hands.

This decision seems a necessary result of the previous decisions on the subject. (For a full treatment of these cases see the able article of Mr.

[1] Juries and Jurymen, 139 No. Am. Rev. 1.

Hibbard in Volume IV. of the HARVARD LAW REVIEW, p. 70.) It would seem, however, that the courts would have reached a more equitable result if they had treated the act of the defendant as inflicting a permanent damage for which compensation could have been given once for all. It is hard to treat as a continuing wrong an act sanctioned by the Legislature. The case rather resembles the taking of property by right of eminent domain than a continuing trespass. Besides, as the defendant contended, the plaintiff had received no substantial damage, as he acquired the property at a lower rate than he could otherwise have done. The decision, in effect, makes him a present of the damages recovered from the company. Still, the rule in New York is settled that such acts as those of the defendant are continuing trespasses. The court, therefore, had to choose between unsettling the law and inflicting in a few cases severe hardship on the defendant. In this view of the case it is difficult to find fault with the decision.

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ALABAMA CLAIMS DECISION. — In *Williams* v. *Heard*,[1] the United States Supreme Court has added another chapter to the interesting history of the Alabama Claims award. The question was this; in 1882, it may be remembered, after paying off all the claims for direct losses, a surplus was found to be left over from the $15,000,000, and Congress thereupon voted to pay this to those who had paid high "war premiums" on insurance policies. Did this award pass as part of a bankrupt's property in an assignment made before 1882; that is, was there any such sufficient claim on this award as to be called property of the bankrupt?

The courts of four States — Maryland in 1887,[2] Massachusetts in 1888,[3] Maine in 1889,[4] and New York in 1890[5] — decided that the award did not belong to the assignees. The Supreme Court, following Chief Justice Field's dissenting opinion in the Massachusetts case, now decides that it *did* go to them as part of the bankrupt's property.

The State courts insisted as follows: That the Geneva tribunal awarded only for direct losses and expressly excluded payment for war premiums as contrary to international law. That the United States in its whole course was enforcing rights under the law of nations, and all that was allowed it was indemnity for those rights. That when she collected the award from England, she did so as a trustee for those whose claims she had been enforcing, *i. e.*, the claims of those suffering direct loss. There was no pretence that the United States received money on any trust to pay war premiums. Hence the bankrupt had no claim sounding in trust against the fund received from England. The award by Congress, in 1882, was therefore an "act of grace and bounty," "a pure gratuity," "a simple gift" to those who had no claim on any one, either legal or equitable. As there was no claim, nothing could pass by assignment.

This reasoning the Supreme Court entirely overrules. It first sets aside — very rightly, it would seem — the idea that *any one* had a claim to any part of the Geneva award. It denies that even the direct losers had a claim, or that the money was held in trust for them. Congress could distribute or hold the money as it saw fit.

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[1] Vol. II. Supreme Court Rep. 885.
[2] *Brooks* v. *Ahrens*, 68 Md. 212.
[3] *Heard* v. *Sturgis*, 146 Mass. 545.
[4] *Kingsbury* v. *Mattocks*, 17 Atl. Rep. 126.
[5] *Taft* v. *Warsily*, 24 N. E. Rep. 826.